

ROD STONE (Cal. Bar No. 145405)
JULIE KIMBALL (Cal. Bar No. 252449)
MICHAEL MENSSSEN (Cal. Bar No. 273388)
BRANDON J. STOKER (Cal. Bar No. 277325)
KAREN MOODY (Cal. Bar No. 273178)
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000

Attorneys for Petitioners VENICE STAKEHOLDERS
ASSOCIATION and MARK RYAVEC

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

<i>In the matter of:</i> Venice Main Post Office Venice, California 90291 (Mark Ryavec and Venice Stakeholders Association, Petitioners)	Docket No. A2012-17
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**MOTION TO COMPEL REDACTED INFORMATION AND ANY ADDITIONAL
RELEVANT DOCUMENTATION NOT INCLUDED IN THE ADMINISTRATIVE
RECORD FILED DECEMBER 2, 2011**

Petitioners Venice Stakeholders Association and Mark Ryavec (collectively “the Venice Stakeholders”), by counsel, respectfully move this Commission to compel the United States Postal Service (“Postal Service”) to produce redacted information and any additional relevant documentation not included in the administrative record filed December 2, 2011 in this matter consistent with this Commission’s prior order and with Rule 113 of the Commission’s Rules of Practice and Procedure.¹ Specifically, the

¹ 39 C.F.R. 3001.113.

Venice Stakeholders respectfully request that this Commission compel the Postal Service to produce all documents related to: (1) the Postal Service's plans to renovate and prepare the Annex for retail operations; (2) the Postal Service's attempt to sell the Venice Main Post Office ("VMPO"); and (3) the calendar for closing the VMPO and opening the Annex as a retail facility.

In the scheduling order issued on October 20, 2011,² the Commission directed the Postal Service to file the administrative record with the Commission by November 1, 2011, pursuant to Rule 113. *Id.* at 2. The Postal Service failed to file the administrative record by this date, forcing the Venice Stakeholders to request that the Commission compel the Postal Service to do so.³ The Commission then ordered the Postal Service to produce the administrative record by November 28;⁴ however, it did not do so until the close of business on December 2.⁵

The administrative record filed on December 2 by the Postal Service is deficient. The record filed by the Post Office includes only 21 pages of substantive material, which have been extensively redacted to eliminate important information. Indeed, of the 135 pages filed, 71 pages consist of: (1) the myriad correspondence from the Venice Stakeholders, other Venice residents, and government officials opposing the closure of the VMPO (see Administrative Record ("AR") Item Nos. 9-11, 18-19, 23-24), (2) a press release (AR Item No. 15), (3) the CZMA Federal Consistency Overview, Section 307 of

² Docket No. A2012-17, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 20, 2011 (Order No. 918).

³ Docket No. A2012-17, Motion to Compel Filing of the Administrative Record and Request for Leave to Answer the U.S. Postal Service's Motion to Dismiss in Petitioners' Initial Brief, November 14, 2011.

⁴ Docket No. A2012-17, Order Adjusting Procedural Schedule, November 16, 2011 (Order No. 967).

⁵ Docket No. A2012-17, United States Postal Service Response to Order No. 967, December 2, 2011.

the Coastal Zone Management Act (AR Item No. 22), and (4) a copy of the Petition for review in this case (AR Item No. 25).⁶ An additional 15 pages are merely coversheets or notices of redaction, and 7 pages are signed and unsigned versions of the same document (see AR Item Nos. 1-2). Of the 42 remaining pages, 21 pages consist of slides from a community presentation and a meeting agenda, which contain no non-duplicative substantive information. AR Item Nos. 7-8.

The 21 remaining pages have been redacted in whole or in part to eliminate critical information. In addition to the redacted information, the Venice Stakeholders believe there is additional documentation regarding the decision to close the VMPO which the Postal Service failed to include in the administrative record, as it seems unlikely that the Postal Service could make the major decision to close the historic VMPO based on such a scant record.

The missing or redacted information is crucial to the Venice Stakeholders' argument that the Postal Service intends to close and sell the VMPO facility before a suitable replacement facility has been provided, thereby subjecting the Venice community to an indefinite "closure" of retail postal facilities available to the public. Notably, the Postal Service provided absolutely no information regarding the implementation schedule for its plan. See AR Item No. 1 at 7; Item No. 2 at 7.

The Postal Service redacted the relevant information in the single page it provided regarding the implementation schedule, claiming it is protected under FOIA Exemptions 3 and 5. Respondent's List of Privileged or Protected Documents Withheld

⁶ The Venice Stakeholders do not contend that it was inappropriate for the Postal Service to include any of these documents in the administrative record, but simply wish to demonstrate that the record largely lacks any substantive information regarding the details behind the Postal Service's decision to close the VMPO.

from Production, Dec. 2, 2011 (“Privilege Log”). However, FOIA Exemption 3 applies to information which would be protected pursuant to good business practice; that is, information large corporations do not publicly disclose “as it is the kind of information that would give competitors an edge . . . in future negotiations . . .” *Airline Pilots Ass’n, Intern. v. U.S. Postal Service*, 2004 WL 5050900, 6 (D.D.C. 2006) (agency properly withheld redacted portions of an agreement between the Postal Service and the Federal Express Corporation which included detailed pricing information and specifications regarding the shipment of certain items); *see also Wickwire Gavin, P.C. v. U.S. Postal Service*, 356 F.3d 588, 590 (4th Cir. 2004) (agency properly withheld portions of a contract between the Postal Service and a supplier of packing supplies that contained detailed quantity and pricing information, as well as documents showing net revenue for sale of items supplied under the contract).

Furthermore, FOIA Exemption 5 simply protects documents that would be protected in normal civil discovery, such as attorney work-product or attorney client communications. *See, e.g., NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975); *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 799 (1984). It is hard to imagine how the redacted information in this document—which amounts to a measly two inch line of redaction and purports to include only information regarding estimated start and completion dates for Community outreach and project completion—could be considered sensitive business information protected under FOIA Exemption 3 or would be protected in normal civil discovery under Exemption 5.

Regardless, the Postal Service must have more information in its possession regarding the implementation schedule for its plan than a single page with information

that can be covered with a two inch line of redaction, and it is inconceivable that the Postal Service could argue that its action is not a closure without providing the Venice Stakeholders any information whatsoever regarding whether it plans to sell and close the VMPO before providing a suitable replacement facility.

Moreover, the missing or redacted information is critical to the Venice Stakeholders' argument that the Postal Service, in consolidating the VMPO with the Postal Service Annex in Venice, will so drastically reduce the amount of services available to the Venice community so as to subject the community to a constructive "closure" of the post office in Venice. In particular, the Postal Service redacted information regarding the projected number Post Office Boxes that will be installed in the Postal Service Annex, claiming FOIA Exemptions 3 and 5 and 39 U.S.C. § 410(c)(2)⁷. AR Item No. 1 at 5; Item No. 2 at 5; Privilege Log at 1-2. It is not apparent how the sheer sum of projected Post Office Boxes could be considered sensitive business information protected under FOIA Exemption 3 or 39 U.S.C. § 410(c)(2), or would be protected in normal civil discovery under Exemption 5.

The Postal Service further redacted all information regarding alternatives considered by the Postal Service in determining to close the VMPO, claiming FOIA Exemption 5 applies. See AR Item No. 1 at 6; Item No. 2 at 6; Privilege Log at 1-2. It does not appear that this document was drafted by or at the request of an attorney (particularly considering that other portions of the document were produced), and it is not clear what other privilege could apply to all information regarding alternatives to closure of the VMPO. Even to the extent that some or all of these redactions are

⁷ 39 U.S.C. § 410(c)(2) protects information "which under good business practice would not be publicly disclosed," similar to FOIA Exemption 3 discussed above.

warranted, it seems probable that the Postal Service has more than this scant information in its possession regarding these important issues, and the Postal Service cannot argue that its action is not a closure without providing the Venice Stakeholders with crucial information to that end, such as the alternatives considered and volume of services that will be offered at any replacement facility.

WHEREFORE, the Venice Stakeholders respectfully request an order directing the Postal Service to produce the redacted information and any additional relevant documentation not included in the administrative record filed in this matter as soon as possible, including but not limited to all documents related to: (1) the Postal Service's plans to renovate and prepare the annex for retail operations; (2) the Postal Service's attempt to sell the Venice Main Post Office ("VMPO"); and (3) the calendar for closing the VMPO and opening the Annex as a retail facility.

DATED: December 7, 2011

/s/ Julie Kimball
JULIE KIMBALL
Attorney for Petitioners
VENICE STAKEHOLDERS ASSOCIATION
and MARK RYAVEC